IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13829 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAHESHKUMAR JAYANTILAL RATHOD (MISTRY) - Petitioner(s)

Versus

KALUBHAI BHANABHAI - Respondent(s)

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Appearance :

MR SHASHIKANT S GADE for Petitioner(s) : 1,
MR LN MEDIPALLY for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 18/01/2006

ORAL JUDGMENT

1. Heard learned Advocate, Mr.S.S.Gade, on behalf of the petitioner and learned Advocate, Mr.L.N.Medipally, appearing on behalf of respondent.

2. In the present petition, petitioner has challenged the award passed by Labour Court, Bhavnagar in Reference (LCB) No.315 of 1991 dated 30th December,2000, wherein, in absence of petitioner, Labour Court has granted reinstatement with continuity of service with full back-wages of interim period. Learned Advocate, Mr.Gade, appearing for petitioner submitted that there is alternative remedy available to petitioner under Rule 26-A of the Industrial Dispute Gujarat Rules,1966 to file application before Labour Court for setting aside ex-parte award and petitioner will avail the alternative remedy within a period of one month. However, in the meanwhile, his request to protect the petitioner, so respondent may not execute the ex-parte award against the petitioner.

3. Learned Advocate, Mr.L.N.Medipally, appearing for respondent submitted that workman has expired in January,2005. However, he submitted that if petitioner wants to avail alternative remedy, he may

not say anything about his right. However, he objected to continuance of interim relief against the execution of award.

4. I have considered the submissions made by both learned Advocates. I have perused the ex-parte award passed by Labour Court, Bhavnagar. When alternative statutory remedy is available to the petitioner under Industrial Dispute Gujarat Rules,1966, present petition is not maintainable. However, this Court has issued rule and interim stay in terms of Para.8(C) granted on 22nd September,2003 which was remained continued till date. This Court has passed an order on 17th December,2003 which reads as under :

> “The matter was ordered to be listed today by order dated 10.12.2003, when learned advocate Mr.Prajapati complained that after obtaining ad interim relief in terms of para 8(C), Mr.S.S. Gade, learned advocate for the petitioner is not remaining present for hearing of the interim relief.
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> 2. By the present petition the judgement and

award dated 30.12.2000 in Reference (LCB) No.315 of 1991 is challenged by the petitioner. Mr.Gade submitted that the case of the petitioner is that the business in the name of 'Maheshkumar & Co.' was run by his father who expired on 16.8.1999 and much prior thereto the business was closed. He does not know anything about the business, he is residing in Ahmedabad since long, that he is suffering from kidney disease since 1994, and that he is not in a position to pay anything to the present respondent.

3. In view of that the petition is ordered to be listed for final hearing in regular course.""""

4.1 Considering the order passed by this Court on 17th December,2003 and fact that respondent – workman has expired in January,2005, petitioner may file application before Labour Court, Bhavnagar for setting aside ex-parte award under Rule 26-A of the Industrial Dispute Gujarat Rules,1966. The delay

which has been occurred because of the fact that petition is filed before this Court on 6th May,2003. However, for condoning delay for filing application before Labour Court, petitioner shall have to file separate application for condonation of delay. Labour Court will consider the same in light of the fact that petition filed by petitioner remained pending before this Court for more than 2 years and then, to consider the matter of condoning the delay and pass appropriate orders. The petitioner may also file application for stay under Rule 26-B of the Industrial Dispute Gujarat Rules,1966 before Labour Court, Bhavnagar. In view of these facts, petitioner shall have to file such application within a period of one month from the date of receiving copy of the said order. Labour Court, Bhavnagar is directed to decide such application within a period of six months from the date of receiving a copy of the said order, after giving reasonable opportunity to both the parties. During pendency of application which will be filed by petitioner before Labour Court, interim relief which has been granted by this Court on 22nd

September,2003 shall remain continued in the interest of justice till the stay application is decided by Labour Court, Bhavnagar. In view of above observation and direction, present petition is disposed of. Rule is discharged with no order as to costs. Interim relief stands vacated.

(H.K.RATHOD,J.)

(vipul)